THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.24374 OF 2006

DATED: 27th NOVEMBER, 2006.

Between :

R. Anjaneyulu and others. .. Petitioners

And

Sri G. Nooka Raju, Authorised Officer,
Andhra Bank Zonal Office, Kurnool;
And another. .. Respondents

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ORDER :

This writ petition is fled questioning the notice dated 9-9-2006 issued by the 2nd respondent bank under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

A perusal of the impugned notice shows that the petitioners herein committed default in payment of the amounts due to the 2nd respondent Bank under a credit facility availed by them and a sum of Rs.8,16,478/- was outstanding as on 17-9-2001. In the circumstances, the 2nd respondent initiated proceedings under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Act') which resulted in the possession notice dated 9-9-2006 in respect of the immovable properties belonging to the petitioners herein which are the secured assets. The said action is under challenge in this writ petition.

It is primarily contended by the petitioners that the 2nd respondent Bank has already filed O.S.No.13 of 2001 on the file of the Court of Senior Civil Judge, Vanaparthy for recovery of the amounts allegedly due from the petitioners and therefore the respondents are not entitled to proceed against the secured assets invoking the provisions of the Securitisation Act.

The learned Counsel for the petitioners while placing reliance upon the decision of this Court in NMM PVT. LTD. v. AUTHORISED OFFICER, UBI, VISAKHAPATNAM[1] vehemently contended that since the civil suit for recovery of the amounts due under the very same loan account is pending, it is not open to the respondents to proceed under the provisions of the Securitisation Act.

It needs no reiteration that the Securitisation Act is a special enactment which has been enacted with the object of empowering the Banks and Financial Institutions to take possession of securities

given for financial assistance and sell or lease the same in the event of default without the intervention of the Court.

Section 35 of the Act made it clear that the provisions of the Securitisation Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 37 of the Act further provides that the provisions of the Securitisation Act shall be in addition to and not in derogation of the other laws for the time being in force. In view of the said express provisions, the mere fact that the respondents have already filed a civil suit for recovery of the amounts allegedly due under the very same loan account is not a bar to proceed against the secured assets invoking the provisions of the Securitisation Act.

The decision of the Division Bench cited by the learned Counsel for the petitioners is of no assistance to the present case since in the said decision the question relating to the invocation of parallel remedies was neither raised nor decided. The question that arose for consideration in the said decision was whether the Debts Recovery Tribunal while granting interim stay of taking possession of the property was justified in imposing a condition that the petitioner shall deposit a part of the amount allegedly due under the loan account. The proceedings were instituted before the Debts Recovery Tribunal under Section 17 of the Securitisation Act contending that the secured assets being agricultural lands are exempted from the purview of the Act. The Division Bench while observing that the question whether the land in question is an agricultural land or not requires to be decided on the basis of the evidence to be led in the appeal held that while considering interlocutory application the Tribunal was not justified in imposing a condition for depositing part of the amounts due.

The facts in the instant case are entirely different and therefore the ratio laid down in the above decision has no application at all.

For the aforesaid reasons, the writ petition is devoid of any merit

and accordingly the same is dismissed. No costs. However, this shall not preclude the petitioners to invoke the remedy under Section 17 of the Securitisation Act, if they so choose.

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G. ROHINI, J.

Dt. 27–11-2006

gbs

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[1] 2005 (4) ALD 806 (DB)